

## § 605.2

## 49 CFR Ch. VI (10–1–07 Edition)

not limited to grants for the purchase of buses as is section 164(b).

(b) By the terms of section 3(g) no Federal financial assistance may be provided for the construction or operation of facilities and equipment for use in providing public mass transportation service to an applicant unless the applicant and the Administrator enter into an agreement that the applicant will not engage in school bus operations exclusively for the transportation of students and school personnel, in competition with private school bus operators.

### § 605.2 Scope.

These regulations apply to all recipients of financial assistance for the construction or operation of facilities and equipment for use in providing mass transportation under: (a) The Federal Mass Transit Act of 1964, as amended (49 U.S.C. 1601 *et seq.*); (b) 23 U.S.C. 142 (a) and (c); and 23 U.S.C. 103 (e)(4).

### § 605.3 Definitions.

(a) Except as otherwise provided, terms defined in the Federal Mass Transit Act of 1964, as amended (49 U.S.C. 1604, 1608) are used in this part as so defined.

(b) For purposes of this part—

*The Acts* means the Federal Mass Transit Act of 1964, as amended (49 U.S.C. 1601 *et seq.*); 23 U.S.C. 142 (a) and (c); and 23 U.S.C. 103(e)(4).

*Administrator* means the Federal Mass Transit Administrator or his designee.

*Adequate transportation* means transportation for students and school personnel which the Administrator determines conforms to applicable safety laws; is on time; poses a minimum of discipline problems; is not subject to fluctuating rates; and is operated efficiently and in harmony with state educational goals and programs.

*Agreement* means a contractual agreement required under section 3(g) of the Federal Mass Transit Act of 1964, as amended (49 U.S.C. 1602(g)).

*Applicant* means applicant for assistance under the Acts.

*Assistance* means Federal financial assistance for the purchase of buses and the construction or operation of facilities and equipment for use in providing mass transportation services

under the Acts, but does not include research, development and demonstration projects funded under the Acts.

*Grant contract* means the contract between the Government and the grantee which states the terms and conditions for assistance under the Acts.

*Government* means the Government of the United States of America.

*Grantee* means a recipient of assistance under the Acts.

*Incidental* means the transportation of school students, personnel and equipment in charter bus operations during off peak hours which does not interfere with regularly scheduled service to the public (as defined in the Opinion of the Comptroller General of the United States, B160204, December 7, 1966, which is attached as appendix A of this part).

*Interested party* means an individual, partnership, corporation, association or public or private organization that has a financial interest which is adversely affected by the act or acts of a grantee with respect to school bus operations.

*Reasonable Rates* means rates found by the Administration to be fair and equitable taking into consideration the local conditions which surround the area where the rate is in question.

*School bus operations* means transportation by bus exclusively for school students, personnel and equipment in Type I and Type II school vehicles as defined in Highway Safety Program Standard No. 17.

*Trippler service* means regularly scheduled mass transportation service which is open to the public, and which is designed or modified to accommodate the needs of school students and personnel, using various fare collections or subsidy systems. Buses used in tripper service must be clearly marked as open to the public and may not carry designations such as “school bus” or “school special”. These buses may stop only at a grantee or operator’s regular service stop. All routes traveled by tripper buses must be within a grantee’s or operator’s regular route service as indicated in their published route schedules.

*Urban area* means the entire area in which a local public body is authorized by appropriate local, State and Federal

law to provide regularly scheduled mass transportation service. This includes all areas which are either: (a) Within an "urbanized area" as defined and fixed in accordance with 23 CFR part 470, subpart B; or (b) within an "urban area" or other built-up place as determined by the Secretary under section 12(c)(4) of the Federal Mass Transit Act of 1964, as amended (49 U.S.C. 1608(c)(4)).

#### § 605.4 Public hearing requirement.

Each applicant who engages or wishes to engage in school bus operations shall afford an adequate opportunity for the public to consider such operations at the time the applicant conducts public hearings to consider the economic, social or environmental effects of its requested Federal financial assistance under section 3(d) of the Federal Mass Transit Act of 1964, as amended (49 U.S.C. 1602(d)).

### Subpart B—School Bus Agreements

#### § 605.10 Purpose.

The purpose of this subpart is to formulate procedures for the development of an agreement concerning school bus operations.

#### § 605.11 Exemptions.

A grantee or applicant may not engage in school bus operations in competition with private school bus operators unless it demonstrates to the satisfaction of the Administrator as follows:

- (a) That it operates a school system in its urban area and also operates a separate and exclusive school bus program for that school system; or
- (b) That private school bus operators in the urban area are unable to provide adequate transportation, at a reasonable rate, and in conformance with applicable safety standards; or
- (c) That it is a state or local public body or agency thereof (or a direct predecessor in interest which has acquired the function of so transporting schoolchildren and personnel along with facilities to be used therefor) who was so engaged in school bus operations:

(1) In the case of a grant involving the purchase of buses—anytime during the 12-month period immediately prior to August 13, 1973.

(2) In the case of a grant for construction or operating of facilities and equipment made pursuant to the FT Act as amended (49 U.S.C. 1601 *et seq.*), anytime during the 12-month period immediately prior to November 26, 1974.

#### § 605.12 Use of project equipment.

No grantee or operator of project equipment shall engage in school bus operations using buses, facilities or equipment funded under the Acts. A grantee or operator may, however, use such buses, facilities and equipment for the transportation of school students, personnel and equipment in incidental charter bus operations. Such use of project equipment is subject to part 604 of Federal Mass Transit Regulations.

#### § 605.13 Tripper service.

The prohibition against the use of buses, facilities and equipment funded under the Acts shall not apply to tripper service.

#### § 605.14 Agreement.

Except as provided in § 605.11 no assistance shall be provided under the Acts unless the applicant and the Administrator shall have first entered into a written agreement that the applicant will not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators.

#### § 605.15 Content of agreement.

(a) Every grantee who is not authorized by the Administrator under § 605.11 of this part to engage in school bus operations shall, as a condition of assistance, enter into a written agreement required by § 605.14 which shall contain the following provisions:

- (1) The grantee and any operator of project equipment agrees that it will not engage in school bus operations in competition with private school bus operators.